

**Senate Bill No. 1137**

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Passed the Senate August 26, 2010

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*Secretary of the Senate*

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Passed the Assembly August 17, 2010

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 10137, 10139, 10166.01, and 10166.02 of, and to add Section 10166.051 to, the Business and Professions Code, and to amend Sections 22104, 22107, 22109.1, 22109.4, 22112, 50002, 50141, 50144, and 50700 of the Financial Code, relating to mortgage lending.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1137, Committee on Banking, Finance and Insurance. Mortgage lending.

(1) Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and real estate salespersons by the Real Estate Commissioner and makes a willful violation of its provisions a crime. Existing law makes it unlawful for a real estate broker to employ or compensate, directly or indirectly, any unlicensed person for performing any acts for which a real estate broker or real estate salesperson license is required. Existing law makes it a crime for a person to act as a real estate broker or real estate salesperson, or to advertise themselves as a real estate broker, without having a license.

This bill would make it unlawful for a real estate broker to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required if that licensee does not hold a mortgage loan originator license endorsement. The bill would make it a crime for a person to act as a mortgage loan originator without a license endorsement or to advertise using words indicating the person is a real estate salesperson or a mortgage loan originator without having a license or license endorsement. The bill would also authorize the commissioner to deny, suspend, revoke, restrict, condition, or decline to renew a mortgage loan originator license endorsement, or take other actions, after notice and opportunity for a hearing, under specified conditions.

Existing law requires a real estate broker who acts, as specified, to make, arrange, or service loans secured by real property containing one to 4 residential units, and any real estate person who acts in a similar capacity under the supervision of the broker,

to notify the Department of Real Estate within 30 days of commencing that activity. Existing law makes a real estate broker that fails to notify the department subject to specified penalties and authorizes the commissioner to suspend or revoke the license of the real estate broker.

This bill would specify that these penalties also apply to a real estate salesperson who fails to notify the commissioner within 30 days of commencing those activities.

Because a willful violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(2) Existing law provides for the licensure and regulation of finance lenders and brokers, residential mortgage lenders and servicers, and mortgage loan originators by the Department of Corporations. The California Finance Lenders Law requires a licensed finance lender or broker employing one or more mortgage loan originators to continuously maintain a minimum net worth of \$250,000.

This bill would, instead, require a licensed finance lender or broker that employs one or more mortgage loan originators and that makes residential mortgage loans to continuously maintain that net worth of \$250,000 and would require a licensed finance broker that employs one or more mortgage loan originators and that arranges, but does not make, residential mortgage loans, to continuously maintain a net worth of \$50,000.

Existing law requires each finance lender and broker licensee to pay to the commissioner its pro rata share of all costs and expenses associated with the administration of the California Finance Lenders Law. Existing law requires the commissioner to notify a licensee, on or before the 30th day of November in each year, the amount levied against it for its pro rata share of those costs and requires a licensee to pay that amount by December 31.

This bill would, instead, require the commissioner to notify each finance lender and broker licensee by the 30th day of September in each year and would require a licensee to pay by October 31.

Existing law requires each finance lender and broker licensee to maintain a surety bond in a minimum amount of \$25,000. Existing law authorizes the commissioner to, by rule, require a higher bond amount for a licensee employing one or more mortgage loan originators.

This bill would, instead, authorize the commissioner to, by rule, require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans.

The California Finance Lenders Law and the California Residential Mortgage Lending Act prohibit the commissioner from issuing a mortgage loan originator license unless the commissioner makes specified findings relating to the background, financial responsibility, and education of the applicant. Those laws also require a mortgage loan originator to comply with specified minimum standards by December 31 of each year and require a mortgage loan originator license to expire at midnight on January 31 if the licensee fails to satisfy those standards.

This bill would, instead, require the commissioner to deny an application for a mortgage loan originator license unless the commissioner makes those specified findings and would require the commissioner, before denying an application for licensure, to proceed pursuant to specified administrative hearing procedures. The bill would also require a mortgage loan originator license to expire at midnight on December 31, instead of January 31, if a licensee fails to satisfy the minimum standards.

Existing law defines the term “brokerage services” for purposes of the California Residential Mortgage Lending Act.

This bill would correct an erroneous cross-reference in the provisions defining “brokerage services.”

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 10137 of the Business and Professions Code is amended to read:

10137. It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson

licensed under the broker employing or compensating him or her, or to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required, if that licensee does not hold a mortgage loan originator license endorsement; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed.

It is unlawful for any licensed real estate salesperson to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.

SEC. 2. Section 10139 of the Business and Professions Code is amended to read:

10139. Any person acting as a real estate broker, real estate salesperson, or mortgage loan originator without a license or license endorsement, or who advertises using words indicating that he or she is a real estate broker, real estate salesperson, or mortgage loan originator without being so licensed or without having obtained a license endorsement, shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars (\$20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars (\$60,000). If a Real Estate Fraud Prosecution Trust Fund, as described in Section 27388 of the Government Code, exists in the county where a person or corporation is convicted, any fine collected from the person in excess of ten thousand dollars (\$10,000) or any fine collected from the corporation in excess of fifty thousand dollars (\$50,000) shall be deposited in that Real Estate Fraud Prosecution Trust Fund.

SEC. 3. Section 10166.01 of the Business and Professions Code is amended to read:

10166.01. For purposes of this article, the following definitions shall apply:

(a) “SAFE Act” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

(b) (1) “Mortgage loan originator” means an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain.

(2) Mortgage loan originator does not include any of the following:

(A) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as otherwise provided in subdivision (c) of Section 10166.03. The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(B) An individual that only performs real estate brokerage services, as defined in subdivision (a) or (b) of Section 10131, unless that person is compensated by a lender, other mortgage loan originator, or by any agent of any lender or other mortgage loan originator.

(C) An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires such an employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.

(D) An individual that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.

(E) An individual licensed or registered as a mortgage loan originator pursuant to the provisions of the Financial Code and the SAFE Act.

(c) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

(d) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real estate upon which is constructed or intended to be constructed a dwelling. “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence.

(e) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(f) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a mortgage loan originator.

SEC. 4. Section 10166.02 of the Business and Professions Code is amended to read:

10166.02. (a) A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131, and who makes, arranges, or services loans secured by real property containing one to four residential units, and any salesperson who acts in a similar capacity under the supervision of that broker, shall notify the department by January 31, 2010, or within 30 days of commencing that activity, whichever is later. The notification shall be made in writing, as directed, on a form that is acceptable to the commissioner.

(b) No individual may engage in business as a mortgage loan originator under this article without first doing both of the following:

(1) Obtaining and maintaining a real estate license pursuant to Article 2 (commencing with Section 10150).

(2) Obtaining and maintaining a real estate license endorsement pursuant to this article identifying that individual as a licensed mortgage loan originator.

(c) License endorsements shall be valid for a period of one year and shall expire on the 31st of December each year.

(d) Applicants for a mortgage loan originator license endorsement shall apply in a form prescribed by the commissioner.

Each form shall contain content as set forth by rule, regulation, instruction, or procedure of the commissioner.

(e) In order to fulfill the purposes of this article, the commissioner may establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

(f) A real estate broker or salesperson who fails to notify the department pursuant to subdivision (a), or who fails to obtain a license endorsement required pursuant to paragraph (2) of subdivision (b), shall be assessed a penalty of fifty dollars (\$50) per day for each day written notification has not been received or a license endorsement has not been obtained, up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day, the penalty is one hundred dollars (\$100) per day, not to exceed a total penalty of ten thousand dollars (\$10,000), regardless of the number of days, until the department receives the written notification or the licensee obtains the license endorsement. Penalties for violations of subdivisions (a) and (b) shall be additive.

(g) The commissioner may suspend or revoke the license of a real estate broker or salesperson who fails to pay a penalty imposed pursuant to this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of that penalty.

(h) All penalties paid or collected under this section shall be deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470).

SEC. 5. Section 10166.051 is added to the Business and Professions Code, to read:

10166.051. In addition to any penalties authorized by regulations adopted pursuant to Section 10166.15, the commissioner may do one or more of the following, after appropriate notice and opportunity for hearing:



(a) Deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license endorsement for a violation of this article, or any rules or regulations adopted hereunder.

(b) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license endorsement, if an applicant or endorsement holder fails at any time to meet the requirements of Section 10166.05 or 10166.09, or withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal.

(c) Issue orders or directives to licensees who hold mortgage loan originator license endorsements, as follows:

(1) Order or direct persons subject to this article to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(2) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to desist and refrain.

(3) Enter immediate temporary orders to cease business under a license endorsement if the commissioner determines that the license endorsement was erroneously granted or the endorsement holder is currently in violation of this article.

(4) Order or direct any other affirmative action the commissioner deems necessary.

SEC. 6. Section 22104 of the Financial Code is amended to read:

22104. (a) The applicant shall file with the application for a finance lender or broker license financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars (\$25,000). Except as provided in subdivisions (b) and (c), a licensee shall maintain a net worth of at least twenty-five thousand dollars (\$25,000) at all times.

(b) A licensed finance lender or broker, that employs one or more mortgage loan originators and that makes residential mortgage loans, shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars (\$250,000).

(c) A licensed finance broker, that employs one or more mortgage loan originators and that arranges, but does not make, residential mortgage loans, shall continuously maintain a minimum net worth of at least fifty thousand dollars (\$50,000).

(d) The commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth, as are necessary to accomplish the purposes of this division and comply with the SAFE Act.

SEC. 7. Section 22107 of the Financial Code is amended to read:

22107. (a) Each finance lender and broker licensee shall pay to the commissioner its pro rata share of all costs and expenses, including the costs and expenses associated with the licensing of mortgage loan originators it employs, reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion that a licensee's gross income bears to the aggregate gross income of all licensees as shown by the annual financial reports to the commissioner, for the costs and expenses remaining after the amount assessed pursuant to subdivision (c).

(b) On or before the 30th day of September in each year, the commissioner shall notify each licensee of the amount assessed and levied against it and that amount shall be paid by October 31. If payment is not made by October 31, the commissioner shall assess and collect a penalty, in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) In the levying and collection of the assessment, a licensee shall neither be assessed for nor be permitted to pay less than two hundred fifty dollars (\$250) per licensed location per year.

(d) If a licensee fails to pay the assessment on or before the 31st day of October, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a finance lender or broker licensee and any mortgage loan originator licensee employed by the finance lender or broker shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender

of a certificate shall not affect the powers of the commissioner as provided in this division.

(e) The commissioner shall, by rule, establish the timelines, fees, and assessments applicable to applicants for original mortgage loan originator licenses, license renewals, and license changes under this division.

(f) Notwithstanding subdivisions (a) to (e), inclusive, the commissioner may by rule require licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

SEC. 8. Section 22109.1 of the Financial Code is amended to read:

22109.1. (a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court, as follows:

(A) During the seven-year period preceding the date of the application for licensing and registration.

(B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(C) Provided that any pardon of a conviction shall not be a conviction for purposes of this paragraph.

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(4) The applicant has completed the prelicensing education requirement described in Section 22109.2.

(5) The applicant has passed a written test that meets the test requirement described in Section 22109.3.

(6) The applicant is employed by, and subject to the supervision of, a finance lender or broker that has obtained a license from the commissioner pursuant to this division.

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.

SEC. 9. Section 22109.4 of the Financial Code is amended to read:

22109.4. (a) A mortgage loan originator shall comply with the requirements of this section on or before December 31 of every year.

(b) The minimum standards for license renewal for a mortgage loan originator shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 22109.1.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 22109.5.

(3) The mortgage loan originator, or the finance lender or broker employing the mortgage loan originator, has paid all required fees for renewal of the license as provided in Section 22107.

(c) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire at midnight on December 31, except as provided in subdivision (h) of Section 22109.5. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

SEC. 10. Section 22112 of the Financial Code is amended to read:

22112. (a) A licensee shall maintain a surety bond in accordance with this subdivision in a minimum amount of twenty-five thousand dollars (\$25,000). The bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of execution. For licensees with multiple licensed locations, only one surety bond is required. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred

by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

(c) The commissioner may by rule require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

SEC. 11. Section 50002 of the Financial Code is amended to read:

50002. (a) No person shall engage in the business of making residential mortgage loans or servicing residential mortgage loans, in this state, without first obtaining a license from the commissioner in accordance with the requirements of Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130), and any rules promulgated by the commissioner under this law, unless a person or transaction is excepted from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.

(b) An employee of a licensee or of a person exempt from licensure is not required to be licensed when acting within the scope of his or her employment and shall be exempt from any other law from which his or her employer is exempt, except that an individual who meets the definition of a mortgage loan originator in Section 50003.5 shall be subject to this division.

(c) The following persons are exempt from subdivision (a):

(1) Any bank, trust company, insurance company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

(2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.

(3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(4) A person engaged solely in business, commercial, or agricultural mortgage lending.

(5) A wholly owned service corporation of a savings and loan association or savings bank organized under the laws of this state or the wholly owned service corporation of a federally chartered savings and loan association or savings bank that is authorized to transact business in this state.

(6) An agency or other instrumentality of the federal government, or state or municipal government.

(7) An employee or employer pension plan making residential mortgage loans only to its participants, or a person making those loans only to its employees or the employees of a holding company, or an owner who controls that person, affiliate, or subsidiary of that person.

(8) A person acting in a fiduciary capacity conferred by the authority of a court.

(9) A real estate broker licensed under California law, when making, arranging, selling, or servicing a residential loan.

(10) A California finance lender or broker licensed under Division 9 (commencing with Section 22000), when acting under the authority of that license.

(11) A trustee under a deed of trust pursuant to the Civil Code, when collecting delinquent loan payments, interest, or other loan amounts, or performing other acts in a judicial or nonjudicial foreclosure proceeding.

(12) A mortgage loan originator who has obtained a license under Chapter 3.5 (commencing with Section 50140), provided that the mortgage loan originator is employed by a residential mortgage lender or servicer.

(13) A registered mortgage loan originator described in subdivision (e).

(d) An individual, unless specifically exempted under subdivision (e), shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state

without first obtaining and maintaining annually a license in accordance with the requirements of Chapter 3.5 (commencing with Section 50140) and any rules promulgated by the commissioner under that chapter. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) A registered mortgage loan originator is exempt from licensure under subdivisions (a) and (d), when he or she is employed by a depository institution, a subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.

(f) A loan processor or underwriter who is an independent contractor employed by a residential mortgage lender or servicer may not perform the activities of a loan processor or underwriter under this division unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 50120.

SEC. 12. Section 50141 of the Financial Code is amended to read:

50141. (a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation or set aside of such revocation shall not be deemed a revocation.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. For purposes of this paragraph, any pardon of a conviction shall not constitute a conviction.

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(4) The applicant has completed the prelicensing education requirement described in Section 50142.

(5) The applicant has passed a written test that meets the test requirements described in Section 50143.

(6) The applicant is employed by, and subject to the supervision of, a residential mortgage lender or servicer that has obtained a license from the commissioner pursuant to this division.

(7) The surety bond of the residential mortgage lender or servicer employing the applicant covers the activities of the applicant and meets the requirements of Section 50205.

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.

SEC. 13. Section 50144 of the Financial Code is amended to read:

50144. (a) A mortgage loan originator shall comply with the requirements of this section on or before December 31 of every year.

(b) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 50141.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 50145.

(3) The mortgage loan originator, or the residential mortgage lender or servicer employing the mortgage loan originator, has paid all required fees for renewal of the license.

(4) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire at midnight on December 31, except as provided in Section 50145. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

SEC. 14. Section 50700 of the Financial Code is amended to read:

50700. (a) A residential mortgage lender, or a person or employee acting under the authority of a residential mortgage lender's license, including a mortgage loan originator, shall not



provide brokerage services to a borrower, except as provided in subdivision (c).

(b) “Brokerage services” means either of the following:

(1) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in subdivision (p) of Section 50003, secured by residential real estate, as defined in subdivision (v) of Section 50003, made with the funds of another institutional lender, as defined in paragraphs (1), (2), and (4) of subdivision (k) of Section 50003, and closed in the name of that lender, for a fee paid by the borrower or the institutional lender.

(2) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in subdivision (p) of Section 50003, secured by residential real estate, as defined in subdivision (v) of Section 50003, made with the funds of another institutional lender, as defined in paragraphs (1), (2), and (4) of subdivision (k) of Section 50003, but closed in the name of the licensee, for a fee paid by the borrower or the institutional lender.

(c) A residential mortgage lender or a mortgage loan originator employed by a residential mortgage lender may provide brokerage services under the authority of the lender’s license, if the lender first enters into a written brokerage agreement with the borrower that satisfies the requirements of Section 50701.

(d) This chapter does not authorize a residential mortgage lender licensee to do any of the following:

(1) Provide brokerage services through independent contractors.

(2) Provide brokerage services through an employee not licensed as a mortgage loan originator.

(3) Obtain or attempt to obtain for a borrower a residential mortgage loan that is a “high cost mortgage,” referred to in Section 152(aa)(1) of the federal Home Ownership and Equity Protection Act of 1994, as amended (15 U.S.C. Sec. 1602(aa)).

(4) Hold itself out to borrowers, through advertising, as a mortgage broker, rather than a residential mortgage lender. However, a licensee shall disclose its status as a broker or agent when that disclosure is required by law.

(5) Perform activity subject to Section 10131 of the Business and Professions Code, except activities authorized by this division.

(e) A mortgage loan originator may only provide brokerage services as an employee of a licensed residential mortgage lender.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.





























Approved \_\_\_\_\_, 2010

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*Governor*